

AMENDED IN ASSEMBLY APRIL 29, 1998
AMENDED IN SENATE JANUARY 20, 1998
AMENDED IN SENATE JANUARY 12, 1998
AMENDED IN SENATE JANUARY 5, 1998
AMENDED IN SENATE MARCH 31, 1997

SENATE BILL

No. 597

Introduced by Senator Peace

February 24, 1997

~~An act to add Chapter 6 (commencing with Section 17300) to Part 2 of Division 7 of the Business and Professions Code; An act to amend Sections 17500, 17502, 17509, 17510.4, 17510.85, 17530, 17531, 17531.5, 17533, 17533.8, 17533.9, 17533.10, 17537.5, 17539.5, and 17539.55 of the Business and Professions Code, relating to electronic commerce.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 597, as amended, Peace. Internet use.

(1) Existing law governing advertising ~~prohibits a person from soliciting the sale of goods either in person or over the telephone without giving identifying information. It is also unlawful, among other things, for a person soliciting the sale of goods either in person or over the telephone to use a scheme that misrepresents the solicitor's true status or mission for the purpose of making the sale makes it a crime to engage in various unlawful advertising practices conducted by specified means of dissemination or publication.~~

~~This bill would provide that any solicitation, transaction, or communication made over the Internet shall be unlawful if that solicitation, transaction, or communication would be unlawful under specified provisions of law if made in person, by mail, by means of a telephone, or by any other means of communication. The bill would provide that the same criminal or civil penalties or remedies applicable to an unlawful solicitation, transaction, or communication would also apply to an unlawful solicitation, transaction, or communication made over the Internet. This bill would also provide that any person who makes an unlawful solicitation, transaction, or other communication over the Internet that originates from outside the state and who actually sells a product or service to a resident of the state shall, to the extent permitted under the state civil and criminal “long-arm” jurisdiction laws, be subject to the personal jurisdiction, and that person’s property located in this state shall be subject to the “in rem” jurisdiction, of the courts of this state in any relevant civil or criminal action. This bill would expand certain of those unlawful advertising practices to include dissemination or publication over the Internet. It would also declare legislative intent in this regard.~~

Because this bill would expand the scope of existing crimes, it would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that
2 the Internet is a collection of interconnected computers
3 and communications networks that is used for
4 commercial, educational, and recreational purposes. Use
5 of the Internet is growing rapidly, doubling every four

1 months according to some estimates. The number of
2 persons using the Internet has doubled every year for the
3 past several years.

4 ~~SEC. 2. Chapter 6 (commencing with Section 17300)~~
5 ~~is added to Part 2 of Division 7 of the Business and~~
6 ~~Professions Code, to read:~~

7
8 CHAPTER 6. UNLAWFUL USE OF THE INTERNET
9

10 ~~17300. (a) Any solicitation, transaction, or other~~
11 ~~communication made over the Internet, as defined in~~
12 ~~Section 17538, shall be unlawful if it would be unlawful~~
13 ~~under Chapter 5 (commencing with Section 17200),~~
14 ~~Chapter 6.5 (commencing with Section 17350), or~~
15 ~~Chapter 7 (commencing with Section 17360) of Part 2, or~~
16 ~~Chapter 1 (commencing with Section 17500) of Part 3, for~~
17 ~~that solicitation, transaction, or other communication to~~
18 ~~be made in person, by mail, by means of a telephone, or~~
19 ~~by any other means of communication. The same~~
20 ~~criminal or civil penalties or remedies applicable to an~~
21 ~~unlawful solicitation, transaction, or other~~
22 ~~communication also apply to an unlawful solicitation,~~
23 ~~transaction, or communication made over the Internet.~~

24 ~~(b) (1) Any person who violates this section by~~
25 ~~making an unlawful solicitation, transaction, or other~~
26 ~~communication over the Internet that originates from~~
27 ~~outside the state and who actually sells a product or~~
28 ~~service to a resident of the state shall, to the extent~~
29 ~~permitted under Section 410.10 of the Code of Civil~~
30 ~~Procedure, be subject to the personal jurisdiction, and~~
31 ~~that person's property located within this state shall be~~
32 ~~subject to the "in rem" jurisdiction, of the courts of this~~
33 ~~state in any relevant civil action. In addition, that person~~
34 ~~shall, to the extent permitted under Section 778 of the~~
35 ~~Penal Code, be subject to the jurisdiction of the courts of~~
36 ~~this state in any relevant criminal action.~~

37 ~~(2) Notwithstanding paragraph (1), it is not the intent~~
38 ~~of the Legislature to either limit jurisdiction in any other~~
39 ~~application of, or to require actual sale as an element of~~
40 ~~any claim under, this section, Chapter 5 (commencing~~

1 ~~with Section 17200) of Part 2, or Chapter 1 (commencing~~
2 ~~with Section 17500) of Part 3.~~

3 ~~SEC. 3.~~

4 *SEC. 2. Section 17500 of the Business and Professions*
5 *Code is amended to read:*

6 17500. It is unlawful for any person, firm, corporation
7 or association, or any employee thereof with intent
8 directly or indirectly to dispose of real or personal
9 property or to perform services, professional or
10 otherwise, or anything of any nature whatsoever or to
11 induce the public to enter into any obligation relating
12 thereto, to make or disseminate or cause to be made or
13 disseminated before the public in this state, or to make or
14 disseminate or cause to be made or disseminated from
15 this state before the public in any state, in any newspaper
16 or other publication, or any advertising device, or by
17 public outcry or proclamation, or in any other manner or
18 means whatever, *including over the Internet*, any
19 statement, concerning ~~such that~~ real or personal property
20 or *those* services, professional or otherwise, or concerning
21 any circumstance or matter of fact connected with the
22 proposed performance or disposition thereof, which is
23 untrue or misleading, and which is known, or which by
24 the exercise of reasonable care should be known, to be
25 untrue or misleading, or for any ~~such~~ person, firm, or
26 corporation to so make or disseminate or cause to be so
27 made or disseminated any such statement as part of a plan
28 or scheme with the intent not to sell ~~such that~~ personal
29 property or *those* services, professional or otherwise, so
30 advertised at the price stated therein, or as so advertised.
31 Any violation of the provisions of this section is a
32 misdemeanor punishable by imprisonment in the county
33 jail not exceeding six months, or by a fine not exceeding
34 two thousand five hundred dollars (\$2,500), or by both.

35 *SEC. 3. Section 17502 of the Business and Professions*
36 *Code is amended to read:*

37 17502. This article does not apply to any visual or
38 sound radio broadcasting station or to any publisher of a
39 newspaper, magazine, or other publication, who
40 broadcasts or publishes, *including over the Internet*, an

1 advertisement in good faith, without knowledge of its
2 false, deceptive, or misleading character.

3 *SEC. 4. Section 17509 of the Business and Professions*
4 *Code is amended to read:*

5 17509. (a) Any advertisement, including any
6 advertisement over the Internet, soliciting the purchase
7 or lease of a product or service, or any combination
8 thereof, that requires, as a condition of sale, the purchase
9 or lease of a different product or service, or any
10 combination thereof, shall conspicuously disclose in the
11 advertisement the price of all ~~such~~ those products or
12 services. This requirement shall not in any way affect the
13 provisions of Sections 16726 and 16727 ~~of the Business and~~
14 ~~Professions—Code~~, with respect to unlawful buying
15 arrangements.

16 (b) Subdivision (a) does not apply to any of the
17 following:

18 (1) Contractual plans or arrangements complying
19 with this paragraph under which the seller periodically
20 provides the consumer with a form or announcement
21 card which the consumer may use to instruct the seller
22 not to ship the offered merchandise. Any instructions not
23 to ship merchandise included on the form or card shall be
24 printed in type as large as all other instructions and terms
25 stated on the form or card. The form or card shall specify
26 a date by which it shall be mailed by the consumer (the
27 “mailing date”) or received by the seller (the “return
28 date”) to prevent shipment of the offered merchandise.
29 The seller shall mail the form or card either at least 25
30 days prior to the return date or at least 20 days prior to the
31 mailing date, or provide a mailing date of at least 10 days
32 after receipt by the consumer, except that whichever
33 system the seller chooses for mailing the form or card,
34 shall be calculated to afford the consumer at least 10 days
35 in which to mail his form or card. The form or card shall
36 be preaddressed to the seller so that it may serve as a
37 postal reply card or, alternatively, the form or card shall
38 be accompanied by a return envelope addressed to seller.
39 Upon the membership contract or application form or on
40 the same page and immediately adjacent to the contract

1 or form, and in clear and conspicuous language, there
2 shall be disclosed the material terms of the plan or
3 arrangement including all of the following:

4 (A) That aspect of the plan under which the subscriber
5 shall notify the seller, in the manner provided for by the
6 seller, if the seller does not wish to purchase or receive the
7 selection.

8 (B) Any obligation assumed by the subscriber to
9 purchase a minimum quantity of merchandise.

10 (C) The right of a contract-complete subscriber to
11 cancel his or her membership at any time.

12 (D) Whether billing charges will include an amount
13 for postage and handling.

14 (2) Other contractual plans or arrangements not
15 covered under subdivision (a), such as continuity plans,
16 subscription arrangements, standing order
17 arrangements, supplements, and series arrangements
18 under which the seller periodically ships merchandise to
19 a consumer who has consented in advance to receive that
20 merchandise on a periodic basis.

21 (c) This section shall not apply to the publisher of any
22 newspaper, periodical, or other publication, or any radio
23 or television broadcaster, or the owner or operator of any
24 cable, satellite, or other medium of communication who
25 broadcasts or publishes, *including over the Internet*, an
26 advertisement or offer in good faith, without knowledge
27 of its violation of subdivision (a).

28 *SEC. 5. Section 17510.4 of the Business and*
29 *Professions Code is amended to read:*

30 17510.4. If the initial solicitation or sales solicitation is
31 made by radio, television, letter, telephone, or any other
32 means not involving direct personal contact with the
33 person solicited, *including over the Internet*, this
34 solicitation shall clearly disclose the information required
35 by Section 17510.3. This disclosure requirement shall not
36 apply to any radio or television solicitation of 60 seconds
37 or less. If the gift is subsequently made or the sale is
38 subsequently consummated the solicitation or sale for
39 charitable purposes card shall be mailed to or otherwise

1 delivered to the donor, or to the buyer with the item or
2 items purchased.

3 *SEC. 6. Section 17510.85 of the Business and*
4 *Professions Code is amended to read:*

5 17510.85. Any individual, corporation, or other legal
6 entity who for compensation solicits funds or other
7 property in this state for charitable purposes shall disclose
8 prior to an oral solicitation or sales solicitation made by
9 direct personal contact, radio, television, ~~or~~ telephone, *or*
10 *over the Internet*, or at the same time as a written
11 solicitation or sales solicitation: (a) that the solicitation or
12 sales solicitation is being conducted by a commercial
13 fundraiser for charitable purposes, and (b) the name of
14 the commercial fundraiser for charitable purposes as
15 registered with the Attorney General pursuant to Section
16 12599 of the Government Code.

17 *SEC. 7. Section 17530 of the Business and Professions*
18 *Code is amended to read:*

19 17530. It is unlawful for any person, firm, corporation,
20 or association, or any employee or agent therefor, to make
21 or disseminate any statement or assertion of fact in a
22 newspaper, circular, circular or form letter, or other
23 publication published or circulated, *including over the*
24 *Internet*, in any language in this ~~State~~ *state*, concerning
25 the extent, location, ownership, title, or other
26 characteristic, quality, or attribute of any real estate
27 located in this ~~State~~ *state* or elsewhere, which is known to
28 ~~him~~ to be untrue and which is made or disseminated with
29 the intention of misleading.

30 Nothing in this section shall be construed to hold the
31 publisher of any newspaper, or any job printer, liable for
32 any publication herein referred to unless the publisher or
33 printer has an interest, either as owner or agent, in the
34 real estate so advertised.

35 *SEC. 8. Section 17531 of the Business and Professions*
36 *Code is amended to read:*

37 17531. It is unlawful for any person, firm, or
38 corporation, in any newspaper, magazine, circular, form
39 letter or any open publication, published, distributed, or
40 circulated in ~~the State of California~~ *this state*, including

1 *over the Internet*, or on any billboard, card, label, or other
2 advertising medium, or by means of any other advertising
3 device, to advertise, call attention to or give publicity to
4 the sale of any merchandise, which merchandise is
5 secondhand or used merchandise, or which merchandise
6 is defective in any manner, or which merchandise consists
7 of articles or units or parts known as “seconds,” or
8 blemished merchandise, or which merchandise has been
9 rejected by the manufacturer thereof as not first class,
10 unless there ~~be~~ *is* conspicuously displayed directly in
11 connection with the name and description of ~~such~~ *that*
12 merchandise and each specified article, unit, or part
13 thereof, a direct and unequivocal statement, phrase, or
14 word which will clearly indicate that ~~such~~ *the*
15 merchandise or each article, unit, or part thereof so
16 advertised is secondhand, used, defective, or consists of
17 “seconds” or is blemished merchandise, or has been
18 rejected by the manufacturer thereof, as the ~~fact shall~~
19 *case may be*. Any violation of ~~the provisions~~ of this section
20 is a misdemeanor punishable by imprisonment in the
21 county jail not exceeding six months, or by a fine not
22 exceeding two thousand five hundred dollars (\$2,500), or
23 by both.

24 *SEC. 9. Section 17531.5 of the Business and*
25 *Professions Code is amended to read:*

26 17531.5. It is unlawful for any person, firm, or
27 corporation, in any newspaper, magazine, circular, form
28 letter, or any open publication, published, distributed, or
29 circulated in the State of California, *including over the*
30 *Internet*, or on any billboard, card, label, or other
31 advertising medium, or by means of any other advertising
32 device, to advertise, call attention to, or give publicity to
33 the sale of any merchandise, which merchandise is
34 surplus materials as defined in the Federal Surplus
35 Property Act of 1944, ~~being Chapter 479, Public Laws~~
36 ~~United States 457, approved October 3, 1944 (50 U.S.C.~~
37 ~~*App. Sec. 1622 and following*)~~, unless there ~~be~~
38 ~~conspicuously~~ *is conspicuously* displayed directly in
39 connection with the name and description of ~~such~~ *that*
40 merchandise and each specified article, unit, or part

1 thereof, a direct and unequivocal statement, phrase, or
2 word which will clearly indicate that ~~such~~ *the*
3 merchandise or each article, unit, or part thereof so
4 advertised is or consists of surplus materials as defined in
5 the Federal Surplus Property Act of 1944.

6 *SEC. 10. Section 17533 of the Business and Professions*
7 *Code is amended to read:*

8 17533. It is unlawful for any proprietor or publisher of
9 any newspaper or periodical, *including any newspaper or*
10 *periodical published over the Internet*, ~~willfully~~ *willfully*
11 and knowingly to misrepresent the circulation of the
12 newspaper or periodical, for the purpose of securing
13 advertising or other patronage.

14 *SEC. 11. Section 17533.8 of the Business and*
15 *Professions Code is amended to read:*

16 17533.8. (a) It is unlawful for any person to offer, by
17 mail, by telephone, in person, or by any other means or
18 in any other form, *including over the Internet*, a prize or
19 gift, with the intent to offer a sales presentation, without
20 disclosing at the time of the offer of the prize or gift, in
21 a clear and unequivocal manner, the intent to offer such
22 sales presentation.

23 (b) This section shall not apply to the publisher of any
24 newspaper, periodical, or other publication, or any radio
25 or television broadcaster, or the owner or operator of any
26 cable, satellite, or other medium of communications who
27 broadcasts or publishes, *including over the Internet*, an
28 advertisement or offer in good faith, without knowledge
29 of its violation of subdivision (a).

30 *SEC. 12. Section 17533.9 of the Business and*
31 *Professions Code is amended to read:*

32 17533.9. It shall be unlawful for any person, firm,
33 corporation, or association, in any newspaper, magazine,
34 circular, form letter, or open publication, published,
35 distributed, or circulated in this state, *including over the*
36 *Internet*, or on any billboard, card, label, or other
37 advertising medium, or by means of any other advertising
38 device, to advertise the sale of tear gas, tear gas devices,
39 and tear gas weapons, as defined in Sections 12401 and
40 12402 of the Penal Code, unless there ~~be~~ *is* conspicuously

1 displayed or stated in connection with the name and
2 description of ~~such~~ *that* tear gas, *or those* tear gas
3 weapons; or devices, a direct and unequivocal statement
4 ~~which~~ *that* will clearly indicate that possession or
5 transportation of tear gas and tear gas weapons or devices
6 is prohibited by law unless specifically exempted or
7 permitted pursuant to the authority contained in
8 Chapter 4 (commencing with Section 12401) of Title 2 of
9 Part 4 of the Penal Code.

10 *SEC. 13. Section 17533.10 of the Business and*
11 *Professions Code is amended to read:*

12 17533.10. It shall be unlawful for any person, firm,
13 corporation, or association, in any newspaper, magazine,
14 circular, form letter, or open publication, published,
15 distributed, or circulated in this state, *including over the*
16 *Internet*, or on any billboard, card, label, or other
17 advertising medium, or by means of any other advertising
18 device, to advertise the sale of anabolic steroids, as
19 defined in subdivision (f) of Section 11056 of the Health
20 and Safety Code, unless there ~~be~~ *is* conspicuously
21 displayed or stated in connection with the name and
22 description of any of those anabolic steroids, a direct and
23 unequivocal statement ~~which~~ *that* will clearly indicate
24 that the possession by, or sale to, an ultimate consumer of
25 anabolic steroids is a crime punishable by a substantial
26 fine and imprisonment, unless upon the prescription of a
27 physician, dentist, podiatrist, or veterinarian, licensed to
28 practice in this state, pursuant to Sections 11377, 11378,
29 and 11379 of the Health and Safety Code.

30 *SEC. 14. Section 17537.5 of the Business and*
31 *Professions Code is amended to read:*

32 17537.5. (a) It is unlawful for any person soliciting a
33 sale or order for energy conservation products or services,
34 *including over the Internet*, to do any of the following:

35 (1) Make false claims of affiliation or association with
36 an electrical or gas corporation or municipally owned and
37 operated electrical or gas utility or its energy
38 conservation programs.

(2) Falsely represent that the purchase of an energy conservation service or the purchase or installation of an energy conservation product is required by law.

(3) Misrepresent the nature of the purchaser's obligation for the purchase price of the energy conservation products or services.

(4) Misrepresent the tax consequences of purchasing energy conservation products or services.

(b) Any person, firm, corporation, partnership or association, and any employee or agent thereof who violates this section ~~either~~ (1) in the course of solicitation of a sale or order at a residence; ~~or~~ (2) by telephone; or (3) by any other method or at any other location, *including over the Internet*, shall be liable for the damages provided by subdivision (c) of Section 17500.3, in addition to all other penalties provided by law.

SEC. 15. Section 17539.5 of the Business and Professions Code is amended to read:

17539.5. (a) For purposes of this section and Sections 17539.55 and 17539.6:

(1) "Broadcast" means the utilization of radio, television, home videos, movie screens, telephones, or other medium, *including the Internet*, that does not automatically provide the prospective consumer with a printed or written document he or she can read at leisure.

(2) "Caller" means a telephone user or end user who calls or may call an information-access service or who receives a telephonic solicitation that results in the recipient being connected to an information-access service.

(3) "Carrier" means any regional telephone operating company, interexchange carrier, or local exchange telephone company that provides telecommunications transmission services.

(4) "Incentive" means any item or service of value, however denominated, including, but not limited to, any prize, award, gift, or money, or any coupon that can be used in whole or in part to obtain a product or service.

(5) “Information provider” means a person who advertises or sells an information-access service and on whose behalf charges are billed.

(6) “Information-access service” means any telecommunications service that permits individuals to access a telephone number, and for which the caller is assessed, by virtue of placing or completing the call, a charge that is greater than, or in addition to, the charge for the transmission of the call. Information-access service includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(7) “900 number” means any prefixed telephone number used for information-access service and includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(8) “Prize” means any item of value given to winners in a sweepstakes who have been selected on the basis of lot or chance.

(9) “Program” means the audio message that the caller hears or receives upon placing or receiving a call and being connected to an information-access service.

(10) “Sell an information service” means to attempt to cause a caller to act in such a manner as to cause that caller to be charged for utilizing an information-access service.

(11) “Solicitation” includes all forms of solicitation for information-access services, including, but not limited to, mailings, advertisements in newspapers and magazines, advertisements broadcast by radio or television, advertisements contained in home videos or appearing on movie screens, ~~and~~ telephone solicitations, *and advertisements transmitted over the Internet.* “Solicitation” does not include simple listings in telephone directories provided those listings are not accompanied by any advertising text.

(12) “Sweepstakes” means any procedure for the distribution of anything of value by lot or by chance that is not unlawful under other provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code. Nothing contained in this section shall be

1 deemed to render lawful any activity that otherwise
2 would violate Section 320 of the Penal Code.

3 (b) It is unlawful for any person to engage in any of the
4 following acts in order to encourage any caller to utilize
5 an information-access service:

6 (1) Soliciting callers by use of an automatic dialing
7 device or a live or recorded outbound telephone message.

8 (2) Utilizing signals or tones provided directly or
9 indirectly by the information provider to access the
10 information-access service.

11 (3) Requiring callers to call more than one 900 number
12 or to require calling the same 900 number more than one
13 time in order to receive goods or services represented in
14 the initial solicitation.

15 (4) Utilizing a telephone number other than a 900
16 number from which a caller can be automatically
17 connected to the information-access service.

18 (5) Soliciting callers to call a telephone number other
19 than a 900 number, including, but not limited to, an 800
20 telephone number, when the caller who calls that other
21 number will be referred to a 900 number unless all
22 solicitations for the initial information-access program
23 clearly and conspicuously disclose that a referral will be
24 made and the cost to the caller for calling the 900 number
25 to which the caller will be referred.

26 (6) Soliciting callers to call a number other than a 900
27 number, including, but not limited to, an 800 telephone
28 number, when the caller who calls that number will be
29 asked to accept one or more collect calls unless all
30 solicitations clearly and conspicuously disclose that the
31 caller will be asked to accept one or more collect calls and
32 the cost to the caller for accepting the collect calls. The
33 cost shall be described as cost per minute and cost per
34 hour.

35 (7) Referring a caller from one 900 number to another
36 900 number unless all solicitations for the initial
37 information-access program clearly and conspicuously
38 disclose that a referral will be made and the cost to the
39 caller for calling the 900 number to which the caller will
40 be referred.

1 (8) Advertising that the information-access service is
2 free.

3 (9) Using any printing style, graphic, layout, text,
4 color, or format which states or implies that the
5 solicitation originates from, or was issued by or on behalf
6 of a governmental agency, a public utility, a nonprofit
7 organization, an insurance company, a credit reporting
8 agency, a collection company, or a law firm unless the
9 same is true.

10 (c) It is unlawful for any person to solicit or sell an
11 information-access service unless the following
12 information is clearly and conspicuously disclosed in all
13 solicitations:

14 (1) An accurate description of the information-access
15 service.

16 (2) The name, address, and non-900 telephone
17 number of the information provider.

18 (3) The cost of the call, which shall be disclosed as
19 follows:

20 (A) If the call is billed at a fixed rate, the total cost of
21 the call.

22 (B) If the call is billed on a usage sensitive basis, the
23 cost per minute or other unit of time, and including:

24 (i) In broadcast solicitations, the average cost of the
25 call.

26 (ii) In print solicitations, the average cost or length of
27 the call, except that print solicitations directed to persons
28 in this state shall disclose the average cost of the call.

29 (C) Solicitations in which the length of the program
30 cannot reasonably be determined because the length of
31 the program depends upon the skill of, or the selections
32 or responses made by, the caller, shall be exempt from the
33 cost disclosure provisions of this paragraph.

34 (D) Solicitations that are oral shall include a voice
35 announcement of the cost of the call in clear and
36 understandable language that is clearly audible and
37 articulated at a volume equal to that used to announce the
38 900 number. The cost of the call shall be stated
39 immediately prior to or immediately after the 900
40 number is stated.

1 (E) Solicitations that are broadcast visually shall
2 include, in clear, visible, easily readable, and
3 conspicuously presented letters and numbers, set against
4 a contrasting background, the cost of calling the 900
5 number. The visual disclosure of the cost of the call shall
6 be displayed directly above, below, or adjacent to the
7 number to be called whenever the number is displayed
8 in the commercial. The visual disclosure of the cost of the
9 call shall be a distinct disclosure and shall not be
10 combined in the same paragraph with any other
11 disclosure required to be made pursuant to this section.
12 The lettering of the visual disclosure shall be no less than
13 18 scan lines high and shall be displayed for as long as the
14 number is displayed. Broadcast solicitations shall also
15 include a voice announcement of the cost of the call in
16 clear and understandable language that is clearly audible
17 and articulated at a volume equal to that used to
18 announce the 900 number. The cost of the call shall be
19 stated immediately prior to or after the 900 number is
20 stated.

21 (F) Solicitations that appear in print shall include, in
22 clear, visible, easily readable, and conspicuously
23 presented letters and numbers, the cost of calling the 900
24 number. The printed disclosure of the cost of the call shall
25 be displayed directly above, below, or adjacent to the
26 number. The lettering of the cost disclosure shall be in no
27 less than 10-point type.

28 (4) If the information-access service is aimed at or
29 likely to be of interest to minors, solicitations that appear
30 in print shall contain a statement, in at least the same size
31 print as that used to disclose the 900 number, that persons
32 under the age of 18 years should obtain parental consent
33 before calling. If the solicitation is through a broadcast,
34 this statement shall be of the same audibility as that used
35 to disclose the 900 number.

36 (d) It shall be unlawful for any person to solicit or sell
37 an information-access service that offers the person being
38 solicited the opportunity to participate in a sweepstakes
39 unless:

1 (1) There is available, to all persons who are solicited,
2 a free alternative method of participating that provides
3 all participants with an equal chance of winning. No
4 information-access service shall offer a sweepstakes to
5 consumers in this state in which a person calling a 900
6 number will receive any benefit beyond that received by
7 a person who utilizes an alternative method of entry into
8 the sweepstakes. The free alternative method of entry
9 shall be clearly and conspicuously disclosed in the
10 following manner:

11 (A) Solicitations that are broadcast visually shall
12 include a visual disclosure of the alternate method of
13 entry. The disclosure that one can enter without calling
14 the 900 number and instructions on how one may so enter
15 shall be displayed in close proximity to the 900 number on
16 a static screen against a clean and contrasting
17 background. The lettering of the visual disclosure shall be
18 made in clear, visible, easily readable, and
19 understandable text, shall be no less than 18 scan lines,
20 and shall be displayed for a period of time sufficient to
21 allow a consumer to copy the information. The visual
22 disclosure of the alternate method of entry shall be
23 distinct and shall not be combined in the same paragraph
24 with any other disclosure required to be made pursuant
25 to this section. Solicitations that are broadcast orally shall
26 include an oral disclosure of the alternate method of
27 entry. The disclosure that one can enter for free and how
28 one may so enter shall be made in clear and
29 understandable language that is clearly audible and
30 articulated at a volume equal to that used to announce the
31 900 number and for a period of time sufficient to allow a
32 consumer to copy the information. The oral disclosure
33 shall be made in close proximity to the 900 number. All
34 broadcast solicitations shall include, in addition to the oral
35 or visual disclosure described above, an oral statement
36 that no telephone call is required to enter the
37 sweepstakes.

38 (B) For print solicitations, the disclosure of the
39 existence of the alternate method of entry and detailed
40 instructions on how one may so enter shall be made in

1 clear, visible, and easily readable text in close proximity
2 to the 900 number to be called. The lettering of the
3 disclosure shall be of a size no less than the predominant
4 type size used in the main text of the solicitation and shall
5 not be obscured by any other printed or graphic matter
6 in the solicitation.

7 (2) If the alternate method of entry is by mail, any
8 associated fulfillment that the solicitation represents will
9 be sent to persons who respond by mail shall be
10 completed within 21 days, and the solicitation may not
11 represent that the time for fulfillment of mail-in requests
12 is any longer than the information provider reasonably
13 anticipates it will take to fulfill, which shall, in no event,
14 exceed 21 days.

15 (3) If the alternate method of entry is by mail, and
16 entrants in this state are required to submit a
17 self-addressed envelope to receive any associated
18 fulfillment that the solicitation represents will be sent to
19 persons who respond by mail, entrants shall not be
20 required to affix return postage to their self-addressed
21 envelope.

22 (4) Minors are excluded from participation.

23 (5) The information provider provides a full refund to
24 any caller who requests one upon submission by the caller
25 of proof of payment of the telephone charges, provided
26 that if the caller has not previously requested a refund for
27 the same information-access service call, no proof of
28 payment is required.

29 (6) The amount or value of each prize awarded is not
30 dependent on the number of entries received.

31 (7) The information provider obtains unrestricted
32 title or the right to vest title in all prizes prior to the
33 commencement of the sweepstakes.

34 (8) A list of the winners of all major prizes is made
35 available to any person requesting that list and the
36 solicitation contains an address where a person may
37 request a list of the winners. The names and addresses of
38 the winners shall be available to the Attorney General
39 upon request within 30 days after the selection of winners

1 and shall be maintained for a period of not less than three
2 years.

3 (9) All major prizes shall be awarded. Major prizes that
4 are not claimed by those who have been solicited shall be
5 awarded in a subsequent drawing from the names of all
6 who responded to the solicitation but did not receive a
7 major prize. This drawing shall take place not later than
8 30 days after the deadline for responding to the
9 solicitation. For purposes of this section, a major prize is
10 a prize with a substantial cash value.

11 (10) A deadline by which the recipient of the
12 solicitation must respond is clearly and conspicuously
13 disclosed.

14 (11) The disclosed deadline provides those solicited
15 with at least two weeks within which to respond.

16 (12) The solicitation discloses any material restrictions
17 or conditions that must be satisfied before the recipient
18 is entitled to receive any prize offered.

19 (13) The solicitation contains a description of how the
20 winner of each prize mentioned is selected.

21 (e) Solicitations made to persons in this state offering
22 the opportunity to participate in a sweepstakes shall, with
23 respect to each prize offered, set forth clearly,
24 conspicuously, and in easily readable letters the odds of
25 receiving that prize, described in whole Arabic numerals
26 in a format such as: "1 chance in 100,000" or "1:100,000."
27 If the odds depend upon the number of entries and the
28 number of persons solicited is controlled by the sponsor
29 of the promotion, the solicitation shall set forth the
30 reasonable expectation of entries. If the odds depend
31 upon the number of entries received and the number of
32 persons solicited is not controlled by the sponsor of the
33 sweepstakes, a statement to the effect that the odds
34 depend on the number of entries received shall be
35 sufficient. If more than one prize is offered, the odds shall
36 be separately stated for each prize. The disclosure
37 required to be made pursuant to this subdivision shall be
38 made immediately adjacent to the first identification of
39 the prize to which it relates or in a separate section
40 entitled "Consumer Disclosure" or "Official Rules."

1 These titles shall be printed in no less than 10-point
2 boldface type. The consumer disclosure section shall be
3 clearly and conspicuously disclosed in the solicitation.
4 There shall be a statement referring the recipient of the
5 solicitation to the consumer disclosure section in the main
6 text of the solicitation in close proximity to the description
7 of the prizes, and the odds shall be disclosed within the
8 top 25 percent of the consumer disclosure section. If the
9 consumer disclosure section does not appear on the same
10 page as the statement referring the recipient of the
11 solicitation to this section, the statement shall indicate
12 where the consumer disclosure section is located. If the
13 odds appear in the section entitled “Consumer
14 Disclosure” or “Official Rules,” there shall be a clear and
15 conspicuous statement in the main text of the solicitation
16 in close proximity to the description of the prizes that the
17 odds to the recipient of obtaining the prize or prizes will
18 be found elsewhere, and the statement shall set forth
19 where they will be found. It is not a violation of this
20 section to reference the official rules and the odds in the
21 same statement as long as the statement referencing the
22 official rules and the odds is in the main text of the
23 solicitation in close proximity to the description of the
24 prizes. For example, a statement such as: “See official
25 rules (on (reference to location of rules if not on same
26 page)) for odds and other details” or a similar statement
27 meets the requirements of this provision. This provision
28 shall not apply to broadcast solicitations for sweepstakes
29 in which the winners will be selected in a random
30 drawing in which the odds depend on the number of
31 entries received, provided that those solicitations shall
32 disclose where the official rules are available and the
33 official rules shall set forth the odds of winning in
34 accordance with this subdivision.

35 (f) If more than one prize is listed in a solicitation for
36 an information-access service that offers the opportunity
37 to participate in a sweepstakes, the prizes shall be listed
38 in descending order of retail value.

39 (g) If any incentive is offered in a solicitation for an
40 information-access service, the solicitation shall clearly

1 and conspicuously disclose all restrictions, qualifications,
2 and deadlines that must be complied with in order to
3 obtain the incentive being offered.

4 (h) No person soliciting callers for an
5 information-access service shall represent directly or by
6 implication that the person being solicited is part of a
7 significantly limited group selected to receive an
8 incentive, unless that is true and the number of recipients
9 who will be receiving the solicitation is clearly and
10 conspicuously set forth in the solicitation.

11 (i) No person soliciting callers for an
12 information-access service shall state or imply that the
13 person being solicited has already been chosen to receive
14 a prize in a sweepstakes, will receive one or more of
15 several listed prizes, or may receive one or more of
16 several listed prizes, unless:

17 (1) The disclosed deadline in the solicitation is not
18 more than six months after the first solicitation for
19 participation, provided, however, that this subdivision
20 shall not apply to random draw contests where the
21 solicitation makes it clear that no participant has yet been
22 chosen as the “winner” and the drawing date is clearly
23 and conspicuously disclosed.

24 (2) No further solicitations for participation in a
25 particular sweepstakes is disseminated after the top prize
26 listed in the solicitation has been claimed. A drawing
27 pursuant to paragraph (9) of subdivision (d) shall
28 thereafter be conducted to award any unclaimed prizes.

29 (j) It is unlawful for any person to solicit or sell an
30 information-access service to any person in the following
31 manner:

32 (1) The solicitation offers to persons in this state who
33 respond to the solicitation by calling a 900 number any
34 incentive that:

35 (A) Requires the recipient to purchase goods or
36 services from the information provider in order to utilize
37 the incentive, provided, however, that this subparagraph
38 does not apply to offers where the incentive is a
39 “cents-off” coupon that is usable only for the purchase of
40 the offeror’s own brand name product or products, the

1 total value of the “cents-off” coupon offered is clearly and
2 conspicuously disclosed in the offer, the total value of the
3 “cents-off” coupon does not exceed five dollars (\$5), the
4 “cents-off” coupon is to be utilized to reduce the price of
5 those products at retail stores in the recipient’s area, and
6 at least 60 percent of the revenue per month of the offeror
7 is derived from the sale of the product or products being
8 purchased without the use of the “cents-off” coupons.

9 (B) Requires the recipient to purchase goods or
10 services from any third party in order to utilize the
11 incentive unless:

12 (i) The fact that a purchase or payment is required in
13 order to utilize the incentive is disclosed in the
14 solicitation.

15 (ii) A representative sample of the establishments at
16 which the incentive may be redeemed is disclosed in the
17 solicitation.

18 (iii) If the incentive entitles the recipient to save
19 money on the purchase of goods or services, the incentive
20 is described as a cents-off, discount coupon, or similar
21 term that clearly indicates that it is redeemable only for
22 savings on purchases of goods or services.

23 (2) The solicitation states or implies that the caller is
24 likely to receive one of the prizes offered, by representing
25 in the solicitation that other named persons have already
26 won the other prizes being offered in the solicitation and
27 that the recipient of the solicitation is therefore likely to
28 receive the prize that has not been won by the other
29 persons named in the solicitation, unless the recipient’s
30 odds of receiving the remaining prize are clearly and
31 conspicuously disclosed in the solicitation in close
32 proximity to the list of the other named persons.

33 (k) Nothing contained in this section shall be deemed
34 to render lawful any activity that otherwise would violate
35 Section 17537.

36 (l) No information-access service shall offer a game of
37 skill in which the cost of the call is billed on a usage
38 sensitive basis and in which answers to multiple choice
39 questions of increasing difficulty are required in order to
40 win, unless the solicitation clearly and conspicuously

1 discloses the percentage of contestants anticipated to
2 answer all questions correctly based on prior experience
3 or, if the game is being operated for the first time, based
4 on a good faith estimate.

5 (m) This section does not apply to a regional
6 telephone operating company, interexchange carrier, or
7 local telephone company operating in those capacities,
8 that in good faith telecommunicates an
9 information-access program without knowledge that the
10 program or related advertising violates any provision of
11 this section, Section 17539.55, or Section 17539.6.

12 (n) Neither this section, Section 17539.55, nor Section
13 17539.6 applies to the California State Lottery.

14 *SEC. 16. Section 17539.55 of the Business and*
15 *Professions Code is amended to read:*

16 17539.55. (a) It shall be unlawful to operate a
17 sweepstakes in this state through the use of a 900 number,
18 unless the information provider registers with the
19 Department of Justice as provided in this section within
20 10 days after causing any advertisement for the
21 sweepstakes to be directed to any person in this state.

22 (b) The registration shall include the following
23 information:

24 (1) Each 900 number to be used in the sweepstakes.

25 (2) The name and address of the information provider
26 including corporate identity, if any, and the name and
27 address for the information provider's agent for service
28 of process within the state.

29 (3) A copy of the information provider's audio text,
30 prerecorded, or live operator scripts.

31 (4) A copy of the official rules for the sweepstakes.

32 (5) For television, video, or any on-screen
33 advertisements, a copy of the storyboard and videotape.

34 (6) For radio advertisements, a copy of the script and
35 audio cassette recording.

36 (7) For print *or electronic form transmitted over the*
37 *Internet*, a copy of all advertisements.

38 (8) For direct mail solicitations, a copy of all principal
39 solicitations.

40 (9) For telephone solicitations, a copy of the script.

1 (10) The names of the carriers which the information
2 provider plans to utilize to carry the 900 number calls.

3 (c) The information provider shall pay an annual
4 registration fee of fifty dollars (\$50) for each 900 number
5 used for sweepstakes purposes.

6 (d) It shall be unlawful for any information provider
7 that operates a sweepstakes to make reference, in any
8 contact with the public, to the fact that the information
9 provider is registered with the Department of Justice, as
10 required by this section, or in any other manner imply
11 that such registration represents approval of the
12 sweepstakes by the Department of Justice.

13 *SEC. 17.* No reimbursement is required by this act
14 pursuant to Section 6 of Article XIII B of the California
15 Constitution because the only costs that may be incurred
16 by a local agency or school district will be incurred
17 because this act creates a new crime or infraction,
18 eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section
20 17556 of the Government Code, or changes the definition
21 of a crime within the meaning of Section 6 of Article
22 XIII B of the California Constitution.

23 Notwithstanding Section 17580 of the Government
24 Code, unless otherwise specified, the provisions of this act
25 shall become operative on the same date that the act
26 takes effect pursuant to the California Constitution.